

House of LORDS.

Sir *John Eden*, Bart. *Robert Eden*, Esquire,
Frederick Eden, Son of the said *Robert Eden*,
 an Infant, by the said *Robert Eden*,
 his Father and next Friend, *Jonathan Davison* and *George Hartley*, Esquires,
 standing by Revivor in the Place of *Morton Davison*, Esquire, lately deceased,

Appellants.

The Right Honourable *John Earl of Bute*,
 the Right Honourable *Henry Lord Ravensworth*, and *Mary Bowes*, Widow, the Right
 Honourable *John Earl of Strathmore*,
 the Right Honourable *Mary Eleanor*, Countess of *Strathmore*, his Wife, and the
 Right Honourable *John Bowes*, commonly
 called Lord *Glamis*, an Infant, by the said
 Earl of *Strathmore* his Guardian, - -

Respondents.

The Case of the APPELLANTS,

On the Appeal presented the 19th of *January*, 1774.

William Davison seized in
 1723, of the Manor of
Beamish, and of the inclosed
 Lands in *Pockerley*.



seized as Tenant for Life,
 Remainder to the late Ap-
 pellant in Tail, of inclosed Lands
 in *Tanfield* and *South Causey*.

WILLIAM Davison, Esq; Father of the late Appellant *Morton Davison*, was, before and in the Year 1723, seized to him and his Heirs of the Manor of *Beamish*, alias *Beamish Park*, and divers inclosed Lands and Grounds in *Beamish* and *Pockerley* in the County of *Durham*, and of divers Coal-Mines and Collieries lying and being within and under the said inclosed Lands and Grounds, and within and under the Moors, Wastes, and Commons of and belonging to the said Manor of *Beamish*, alias *Beamish Park*.

The said *William Davison* was also in the same Year 1723 seized as Tenant for Life, with Remainder to the late Appellant *Morton Davison* in Tail, of divers inclosed Lands and Grounds in *Tanfield* and *South Causey*, within and Parcel of the said Manor of *Beamish*,

and of divers Coal-Mines and Collieries lying and being within and under the said inclosed Lands in *Tanfield* and *South Causey*.

William Davison, by Lease
 of the 1st of *January*, 1723,
 to all his Coal-Mines and
 Collieries in the Wastes and Com-
 mons on the South Side of *Bea-
 mish Burn* to the Persons under
 the Respondents claim,
 Forty-one Years.

The said *William Davison* being so seized did, by Indenture dated the 1st of *January*, in the Year 1723, made between the said *William Davison* of the one Part, and the Honourable *Sidney Wortley* alias *Montague*, of *Wortley* in the County of *York*, Esq; *Edward Wortley* of *Wortley* aforesaid, Esq; and *James Montague*, of *Newbold Vorden* in the County of *Leicester*, Esq; of the other Part, in Consideration of the Rents and Covenants therein mentioned and reserved, did demise and grant unto the said *Sidney Wortley* alias *Montague*, *Edward Wortley*, and *James Montague*, their Executors, Administrators, and Assigns, all those his Collieries and Coal-Mines, as well opened as not opened, lying, being, and remaining within and under all or any of the Moors, Wastes, or Commons of or belonging to him the said *William Davison*, on the South Side of *Beamish Burn*, or the River *Team*, in the said County of *Durham*; together with all Powers and Liberties necessary for the winning, working, and getting Coals forth and out of the said Mine; and with sufficient Wayleave and Passage for the said Lessees and their Servants, from Time to Time, during the Term, to lead and carry away, with Carts, Waggon, or any other Carriages, all and every the Coals to be won and gotten out of the said Coal-Mines, over and along all and every the Lands and Grounds of him the said *William Davison*, the nearest and most convenient Way and Ways towards the River *Tyne* or elsewhere, with full Power and Liberty in and upon the said Lands and Grounds, or any of them, to lay Waggon or Coal-Ways, and to drive Drifts, put down Staples, or carry up Levels, and to do whatever else was or should be needful or requisite to be done in or about the winning, working, and getting of Coals forth and out of the said Coal-Mines, and the leading, carrying, or conveying of Coals from the same; To hold the said Collieries, Coal-Mines, and all other the Liberties, Privileges, and Premises, thereby demised unto the said Lessees, their Executors, Administrators, and Assigns, from the Feast of *St. Martin* the Bishop in Winter then last, for the Term of Forty-one Years.

The said Lessees thereby covenanted, that they, their Executors, Administrators, and Assigns should and would, at all Times during the Continuance of the said Term, work said Collieries and

and Coal-Mines fairly and orderly, according to the best and most usual Method of working Collieries, and according to the Judgment of Viewers skilled in Collieries, and leave sufficient Pillars of Coal or Stone to support and uphold the Roof, so as to prevent any Thrust coming upon any of the Drifts or Water-Courses, which were or should be thought necessary or convenient by the Judgment of Viewers to be kept and continued open and upstanding, and should not, by themselves, Agents, or Workmen, do or commit, or wittingly or willingly suffer to be done or committed, any wilful or negligent Act or Thing, whereby the said Collieries and Coal-Mines, or any Part or Parcel thereof, should or might be drowned or overburthened with Water or Styth from any Waste in the said Collieries, or from any neighbouring Colliery.

By another Lease, of the same Date, a like Demise is made by the said William Davison to the same Persons, of the Coal-Mines under the inclosed Lands in Beamish.

By one other Indenture of Lease, bearing Date the same 1st Day of January, 1723, and made between the same Parties, the said William Davison, in Consideration of the Rents and Covenants in and by the same Indenture mentioned and reserved, did demise and grant unto the said Sidney Wortley alias Montague Edward Wortley, and James Montague, their Executors, Administrators, and Assigns, all those his Collieries and Coal-Mines, as well opened as not opened, lying and remaining within and under all and every the inclosed Lands, Grounds, Closes, and Fields of him the said William Davison, at Beamish alias Beamish Park in the County of Durham, together with the like Liberties of winning and working the same, and carrying away Water from the same, and with like sufficient Way-Leave and Passage, and like Liberty of laying Waggon-Ways or Coal-Ways, in, through, over, and along all and every or any the Lands, Grounds, Wastes, or Commons of him the said William Davison, in the said County of Durham, the most convenient Way to or towards the River of Tyne or elsewhere, and to use the same for working the same Collieries, and leading the Coals therein wrought and gotten from the same; To hold the same for the like Term of Forty-one Years, to commence at Martinmas Day then last, under and subject to the same Covenants as are contained in the first stated Lease.

By another Lease also of the same Date, Mr. Davison demises the Coal-Mines in Tanfield and South Causey for Forty-one Years, in case he should so long live.

By one other Indenture, dated the same 1st Day of January 1723, and made between the same Parties, the said William Davison, in Consideration of the Rents and Covenants in and by the same Indenture mentioned and reserved, did demise and grant unto the said Sidney Wortley alias Montague, Edward Wortley, and James Montague, their Executors, Administrators, and Assigns, all those his Collieries and Coal-Mines, as well opened as not opened, lying and remaining within or under all or any his Lands, Closes or Grounds, situate and lying in South Causey and Tanfield, in the County of Durham, or within the Precincts or Territories of them or either of them; together with the like Liberties for winning and working of the same, and conveying away Water from the same, and with the like sufficient Way-Leave and Passage, and like Liberty of laying Waggon-Ways, or other Coal-Ways, in, through, over, and along all or any of the Lands, Grounds, Wastes, or Commons of him the said William Davison, the nearest and most convenient Way to or towards the River of Tyne or elsewhere, and to use the same for working the said Collieries, or leading the Coals from the same, wrought or gotten therein; To hold the same from Martinmas Day then last past, for the Term of Forty-one Years, in case the said William Davison should so long live, subject to the same Covenants as are contained in the first mentioned Lease.

Upon the Death of James Montague, Sidney Wortley alias Montague, and Edward Wortley, became intitled to his Share in the said Collieries.

And, upon the Death of Sidney Wortley, Edward Wortley became intitled to the Whole.

On the 17th of April, 1727, the said Partners in Thirds had divers Coal-Mines and Collieries, besides those held by Lease from the said William Davison; most of which were their own Estates, and others of them were held by Leases for long Terms of Years, and some of them were then working Collieries, and others unopened.

The said James Montague soon afterwards died, and the said Sidney Wortley alias Montague, and the said Edward Wortley, became intitled by Survivorship to the said James Montague's Share and Interest in the Collieries, Coal-Mines, and Premises comprized in the said several Leases of the 1st Day of January, 1723; and the said Sidney Wortley alias Montague afterwards dying, the said Edward Wortley became solely intitled to the same Collieries.

On the 17th of April, 1727, the Respondent Lord Ravensworth, George Liddell, Esq; George Bowes, Esq; the said Edward Wortley, and Thomas Ord, of Newcastle upon Tyne, Gent. had become interested as Partners not only in the said Coal-Mines and Collieries comprized in the said Leases of the 1st Day of January, 1723, but in several other Coal-Mines and Collieries called or known by the several Names hereinafter mentioned, that is to say, Parkhead Colliery, Hedley Fell or Moor and Hedley Colliery, Clavering's Causey, Dawson's Beckley, Dawson's Tanfield, Tanfield Easter Leigh, Robinson's Shield Raw, Andrew's House, Lanchester Fell, and Byer Moor, most of which were their own Estates, and the others of them were held under divers Leases for long Terms of Years, and some of them were then open and working Collieries in the upper Seams thereof, and others not opened.

All which lie contiguous to and to the Rise of the Manor of Beamish, and the late Appellant's Estate.

All the said Collieries and Coal-Mines lie contiguous to and to the Rise of the said Manor of Beamish alias Beamish Park, and to the said inclosed Lands and Grounds in Tanfield and South Causey, or to one of them, and which Collieries were incapable of being worked, or of being worked so conveniently, and to so great Advantage, without having Liberties of Way-Leave and Water-Course in, upon, through, and under, the Lands, Grounds, Wastes, and Commons, of the said William Davison at Tanfield South Causey, Beamish alias Beamish Park, and Pockerley, or some of them.

The Estates under which the said Coal-Mines and Collieries lay are of very great Extent, and all the said Coal-Mines do contain five or more distinct Seams of Coal.

From the Situation of the said Coal-Mines and Collieries, it was proper and necessary for the said Partners in Thirds to obtain from Mr. Davison Liberties of Way-Leave and Water-Course over and through his said Estates, in order to the winning and working the said Coal-Mines and Collieries, and leading the Coals to be got thereout to their Staith Rooms at the River Tyne; and on an Application made to Mr. Davison for such Liberties, an Agreement in Writing was made on the 17th Day of April, 1727, between the said William Davison of the one Part, and Ralph Fetherstonhalgh for and on the Behalf of the said George Liddell, George Bowes, Edward Wortley, and Thomas Ord, of the other Part, in the Words following, viz.

Heads of an Agreement made the 17th of April, 1727, with the Partners in Thirds for Liberties of Way Leave and Water-Course in and over Mr. Davison's Estates, for their Collieries.

" Heads of an Agreement made the 17th of April, between William Davison, Esq; of the one Part, and Ralph Fetherstonhalgh, for and on the Behalf of George Liddell, Esq; George Bowes, Esq; Edward Wortley, Esq; and Thomas Ord, Esq; of the other Part.

" Mr. Davison to make and execute a Lease of the Colliery under the Lands of Pockerley in the County of Durham, with the usual Liberties granted with Collieries unto them the said Mr. Liddell, Mr. Bowes, Mr. Wortley, and Mr. Ord, for the Term of Forty-one Years, from Martinmas,

" 1728;



1728; the Rent to be 100*l. per Annum* certain, whether Coals shall be wrought or not; and the further Rent of 14*s. per Ten*, such Measure as is granted by the said Mr. Davison of his Colliery at Beamish alias Beamish Park, for every Ten that shall yearly exceed 143 Tens, the Rent certain, to be paid at May Day and Martinmas by equal Portions, and the Surplus or further Rent of 14*s. per Ten*, to be paid at Martinmas in each Year of the Term, what Coals shall be wrought and led short in any Year of the Term of the said Rent certain of 100*l. per Annum*, to be made good out of the Surplus Workings and Leadings of the said Colliery in any succeeding Year of the Term, without any further Rent to be paid for the same than the said Rent certain; the Lessees to be at Liberty to determine the Term upon Twelve Months Notice at the End of the Twentieth Year of the Term, or upon Twelve Months Notice to be given upon the 11th Day of November, in any then succeeding Year of the Term, with such further Provisions to be therein contained in case of Civil Wars, or in case of the Mines being wrought out, or being overburthened with Water or Styth, as are contained in the said Mr. Davison's Lease of Beamish alias Beamish Park Colliery; and also such other Covenants to be contained in the Lease to be made pursuant to this Agreement, as are contained in the said Lease of Beamish alias Beamish Park Colliery.

The said Mr. Davison is also to make and execute a Lease to them the said Lessees of Way-Leave for Carts, Wains, or other Carriages, and Liberty of laying, making, and repairing, of one or more convenient Waggon-Way or Waggon-Ways, or other Way or Ways in, through, and over, any of his Lands and Grounds of Tanfield and South Causey in the said County of Durham, for the leading and conveying of Coals from any of their Coal-Mines or Collieries, so as such Waggon-Way or Waggon-Ways, or other Way or Ways, exceed not 16 Yards in Breadth, including Gutters, except in hollow Places where Cuts, Batteries, Bridges, or Mounts, shall be necessary to be made, and also Liberty of making and sinking of Staples or Pits, and of driving of Drift or Drifts, and of making Water-Gates or Water-Courses, and of making or erecting of Water-Engines or other Engines in, upon, or under, any of the said Lands or Grounds, for the drawing of Water, or conveying of Water, Air, or Styth, to or from any of the Coal-Mines or Collieries of them the said Lessees, with all such other Liberties as may or shall be necessary for winning, working, and carrying on, of any Coal-Mines or Collieries of them the said Lessees, or leading of Coals or other necessary Materials to or from the same, to hold for the Term of Twenty-one Years, from the 1st of May, 1728, the Rent to be 100*l. per Annum*, and to be paid at May Day and Martinmas by equal Portions, Mr. Davison, at any Time during his Life, upon the Request, and at the Charges, of the Lessees, to grant a new Lease for any Term not exceeding Twenty-one Years from the making thereof, under the like yearly Rents and Covenants; and further, if thereunto requested, to consent to and give any Assistance in his Power for obtaining, at the Charges of the Lessees, an Act of Parliament, for enlarging the Term hereby agreed to be granted, and making the same the Term of Ninety-eight Years, from the said 1st Day of May, 1728, the said Lessees to covenant to make Gates, Posts, or Rails, or other sufficient Fences, and to find and provide Gate-Keepers to prevent Trespasses by Cattle in any of the Lands of the Lessor where such Liberties shall be used; and in case of Trespasses for Want thereof, to make reasonable Satisfaction, the Damage to be ascertained by two indifferent Persons; Lessees to have Liberty to determine on Twelve Months Notice to be given at the End of the Twentieth Year of the Term, or upon the like Notice to be given in any following Year, upon the 11th Day of November in such following Year; the Lessees also to covenant to pay the Rent reserved, with Liberty of Distress, and of stopping, leading, or using any of the Liberties granted in case of Non-Payment.

The said Mr. Davison is also to grant a Lease to them the said Lessees, of such Way-Leaves and Liberties as aforesaid, in, upon, through, and under any of his Lands, Grounds, Moors, Wastes, or Commons at Beamish alias Beamish Park, and Pockerley, or any of them, or within the Boundaries, Precincts, or Territories of them or any of them, for Ninety-eight Years from the 1st of May 1728, under the yearly Rent of one Pepper-Corn for the first Ten Years of the Term, to be paid at Martinmas in every Year if demanded; after the End of the first Ten Years of the Term, for and during the next Five Years thereof, the yearly Rent of 100*l. per Annum*, at May Day and Martinmas in every of the said Five Years; and after the End of the first Fifteen Years of the said Term, then the yearly Rent of 200*l.* for and during the then Residue and Remainder of the said Term, at the Rent Days aforesaid. Provided, and it is agreed to be the true Intent and Meaning of the Parties, that if the Lessees shall at any Time before the End and Expiration of the said Fifteen Years, lead any Coals in, through, over, or along any of the Lands or Grounds of the Lessor at Beamish, alias Beamish Park, Pockerley, Tanfield, and South Causey, or any of them, from any other Coal-Mines or Collieries than such as they now hold by Lease from the said Lessor; that then, and in such Case, they the said Lessees, from such the Time of their leading Coals from such other Collieries, shall pay the Lessor, during the Residue of the Term, 200*l. per Annum*, at the Days aforesaid, the first Payment to be made at such of the said Rent Days as shall happen next after the leading of such other Coals as aforesaid. And it is further agreed, that in case an Act of Parliament shall not nor cannot be obtained for enlarging the Term of Twenty-one Years agreed to be granted of the Way-Leave and Liberties in Tanfield and South Causey Grounds aforesaid, to the said Term of Ninety-eight Years; or in case no further Lease or Grant thereof shall be made to the said Lessees by the said William Davison, his Heirs or Assigns, so that the yearly Rent of 100*l. per Annum* therefore agreed to be reserved, or any greater Rent that may therefore happen to be reserved, shall not be, or continue to be paid or payable by the said Lessees, during all the said Term of Ninety-eight Years; that then, from the Time such yearly Rent of 100*l. per Annum*, for the Way-Leave and Liberties in Tanfield and South Causey aforesaid, or such greater Rent, as aforesaid, shall cease and determine to be paid or payable by the said Lessees, there shall be paid and payable by them to the said Lessor, his Heirs, or Assigns, for the then Residue of the said Term of Ninety-eight Years agreed to be granted of the Way-Leaves and Liberties at Beamish alias Beamish Park and Pockerley aforesaid, and for and in Respect thereof, over and besides the aforesaid yearly Rent of 200*l.* the further Rent of

100*l.*

" 100 l. at the Days aforesaid, the like Liberty to determine the Term, and the like Covenants for securing the Payment of the several Rents and Sums of Money agreed to be paid, and for preventing Trepasses and Damage, and making Satisfaction for such Damage, is agreed to be contained in this Lease as are agreed to be contained in the other Lease to be made of the Way-Leave and Liberties in *Tanfield* and *South Causey* aforesaid."

24th of December, 1728, said Agreement executed.

On the 24th of December, 1728, the said *George Liddell*, *George Bowes*, *William Davison*, *Edward Wortley*, and *Thomas Ord*, by a Memorandum subjoined to the said Heads of Agreement, and signed by the said *William Davison*, *George Liddell*, *George Bowes*, and by the said *Ralph Fetherstonhaugh* for *Edward Wortley*, and *Thomas Ord*, did approve of and confirm the said Agreement, and did consent that the several Leases therein mentioned should, with all convenient Speed, be drawn and put into Form, ingrossed, sealed, and duly executed by them.

The Lessees named in the Agreement, immediately after the Execution thereof, sunk Staples and Pits, drove Drifts, and made Water-courses for the Use of the Collieries they were then intitled to.

The Lessees named in the Agreement of the 17th of April, 1727, immediately after the Execution thereof, sunk Staples and Pits, drove Drifts, and made Water-Courses in, through, and under the Lands and Grounds, Wastes and Commons of the said *William Davison*, in *Beamish*, alias *Beamish Park*, on the North and North-West Side of *Beamish Bourn*, and did extend such Water-Courses by Drifts, Coal-Workings, or Outstrokes into the several Collieries called *Parkhead* Colliery, *Hedley Fell*, or *Moor* Colliery, *Clavering's Causey* Colliery, *Dawson's*, *Beckley*, and *Tanfield* Colliery, *Dawson's Tanfield* Colliery, and *Tanfield Easterleigh* Colliery by Means whereof the Water was conveyed from the said Collieries; and all the said Collieries were thereby won and wrought, and did, by virtue of the Lease of the 1st of January, 1723, of *South Causey*, and *Tanfield Colliery*, make and lay a Waggon-Way in, through, and over the Lands and Grounds of the said *William Davison*, in *Tanfield*, for the Use of the said *Tanfield* Colliery, and did afterwards extend the said Waggon-Way into *Tanfield Easterleigh* Colliery, for the Use of the said *Easterleigh* Colliery; and did, in Pursuance of the Agreement of the 17th of April, 1727, make and lay a Waggon-Way over the Lands and Grounds of the said *William Davison*, in *South Causey*, for the leading and conveying the Coals from their Collieries called *Robinson's Shield Row*, and *South Moor*, in the West Part thereof, and did use and enjoy said several Waggon-Ways for the Purposes aforesaid.

The Lessees enjoyed the Coal-mines under *Pockerley* from the Execution of the Agreement, and paid the Rents for the same.

November 22, 1758, Notice given by Lessees to determine the Term.

From the Execution of the said Agreement of the 17th of April, 1727, the Lessees named therein, possessed and enjoyed the Collieries and Coal-Mines within and under the said Lands of *Pockerley*, and paid all the Rents that accrued, and from Time to Time became due, but no Lease was ever made thereof pursuant to the said Agreement; and on the 22d of November, 1758, the said *George Bowes* and *Edward Wortley*, being then the surviving Lessees, by Notice in Writing of that Date, did signify to the said *Morton Davison* that it was their Desire the Term agreed to be granted of the said Colliery and Coal-Mines, and Liberties, should cease and determine at the End of Twelve Months next after the Day of the Date of such Notice, according to the true Meaning of the said Agreement for determining the same.

August 1734 the said *Wm. Davison* died.

In August 1734 the said *William Davison* died, leaving *William Davison* his elder Son, and Heir at Law, and the Appellant *Morton Davison*, his younger Son, then an Infant of the Age of thirteen Years; and the said *William Davison* the Son, upon the Death of his Father, became intitled to the said Manor of *Beamish*, alias *Beamish Park*, and the said inclosed Lands, Grounds, Wastes, and Commons, Coal-Mines, and Collieries in *Beamish*, alias *Beamish Park*, and *Pockerley*; and the late Appellant *Morton Davison* became intitled, as Tenant in Tail, to all the inclosed Lands in *Tanfield* and *South Causey*, and the Coal-Mines and Collieries under the same.

In April, 1743, *William Davison* the Son died.

In April 1743, the said *William Davison* the Son died; and upon his Death the Appellant became intitled to the Inheritance of the Manor of *Beamish*, alias *Beamish Park*, and to the said inclosed Lands, Commons and Wastes, Coal Mines and Collieries in *Beamish*, alias *Beamish Park*, and *Pockerley*.

The Share and Interest of *Thomas Ord* assigned to *Edward Wortley*.

William Ord, of *Fenham* in the County of *Northumberland*, Esq; who was the personal Representative of *John Ord*, of the same Place, his Brother, deceased, who was the eldest Son and personal Representative of the said *Thomas Ord*, assigned and conveyed all the Estate, Right, Title, Share, and Interest of the said *Thomas Ord*, in all the said Partnership Collieries, and other the Premises; and also in the said Liberties of Way-Leave and Water-Course agreed to be granted by the said Agreement of the 17th Day of April, 1727, unto the said *Edward Wortley*, his Executors, Administrators, and Assigns; and the Respondent *John Earl of Bute* claiming under the Devises and Executors named in the last Will of the said *Edward Wortley* is now intitled to one third Part, being the Right and Interest of the said *Edward Wortley* and *Thomas Ord*, of and in the said Copartnership Premises, and of and in the said Liberties of Way-Leave and Water-Course before named being one third Part.

Lord *Bute* afterwards became intitled to the Interest of the said *Edward Wortley*.

Lord *Ravenworth* intitled to the Share of *George Liddell*.

The said *George Liddell* is also dead, and the Respondent Lord *Ravenworth*, as his Representative, is become intitled to his Share and Interest in the Premises aforesaid, and, as such, and in his own Right, is intitled to one other full third Part of the Premises.

Lord *Strathmore* and his Lady, Lord *Glamis*, and *Mary Bowes*, to the Share of *George Bowes*.

The said *George Bowes* is also dead, and the Respondents Lord *Strathmore*, *Mary Eleanor Countess of Strathmore*, *John Lord Glamis*, and *Mary Bowes*, are intitled to the remaining third Part of the Premises.

No Lease ever made, pursuant to the said Agreement.

No Lease was ever made or executed by the said *William Davison* of the Liberties of Way-Leave and Water-Course over or under any of his Lands and Grounds in *Tanfield* and *South Causey*, pursuant to the said Agreement, nor was he ever requested by the Lessees to make such or any other Lease, or to give his Consent or Assistance for obtaining an Act of Parliament for enlarging the Term thereby agreed to be granted.

In 1754, the Partners in Thirds became intitled to *Stanley* Colliery.

In 1754 the Partners in Thirds became possessed of and interested in certain Coalmines called *Stanley* (which do adjoin upon the Lands, Wastes, and Coal-Mines of the late Appellant *Morton Davison*, and do lie to the Rise thereof) by a Lease for a long Term of Years, dated on or about the 8th of May, 1754.

and, in 1759, became possessed of *Kiphill* Colliery.

The Partners in Thirds first became possessed of and interested in certain Coal-Mines in *Kiphill*, by and under a Lease for a long Term of Years, dated on or about the 24th Day of December, 1753. The Lands and Coal-Mines in *Kiphill* do adjoin upon and are surrounded on every Side by the Lands and Coal-Mines of the late Appellant *Morton Davison*, in *Beamish*, and do lie to the Rise thereof; and the Coal-Mines in *Kiphill* were and are incapable of being won, worked,

worked, or led without the Liberties of Water-Course and Way-Leave over the Lands of the late Appellant in *Beamish*.

The said Partners in Thirds having, in the Year 1760, extended the Water-Courses made by them by virtue of the said last mentioned Lease of the said *William Davison*, of the 1st of *January*, 1723, in a Place called *South Moor*, Part of the Wastes of the Manor of *Beamish*, and on the South Side of *Beamish Bourn* into *Kipbill* Colliery, and, in the Year 1765 into *Stanley* Colliery; whereby the same Collieries have been in Part won and worked; and having began to carry up the said Water-Course into other Seams of the said *Stanley* Colliery, also to extend the same through *South Moor* to another Colliery called *Blackeston's Shield Raw*, in which they had no Interest until many Years after the Year 1758, whereby the same would be won and worked; and having begun to lead Coals from *Kipbill* and *Stanley* Colliery along the Waggon-Way laid by them by virtue of the last mentioned Lease of the said *William Davison* over the Wastes of the Manor of *Beamish* for the Purpose of leading Coals gotten out of the Collieries in the Wastes and Commons of *Beamish*, on the South Side of *Beamish Burn* to the River *Tyne*; and having led considerable Quantities of such Coals thereon without the Consent of the late Appellant *Morton Davison*, and without making him any Satisfaction for the Use of such Liberties; and the Coal-Mines and Collieries within and under the Grounds late of the said *Morton Davison* being likely to be drowned or overburthened with Water by Means of the many Communications made by the said Partners in Thirds between the Coal-Mines and Collieries of the said *Morton Davison*, and those of other Persons;

In *Trinity Term*, 1766, the late Appellant filed his Bill in the Court of Chancery.

In *Trinity Term*, 1766, the late Appellant exhibited his Bill in the Court of Chancery against the Respondents *John Earl of Bute*, *Henry Lord Ravensworth*, and *Mary Bowes*; and also against *Jane Bowes*, since deceased; and the said Bill was afterwards amended, and the Respondents *John Lord Strathmore*, *Mary Eleanor Countess of Strathmore*, and *John Lord Glamis*, were made Parties Defendants thereto; and the late Appellant, by his said Bill, prayed that the Respondents might set forth an Account of the Number of Tens of Coals which had been wrought and led by them from the said Collieries of *Kipbill* and *Stanley* down and along the said Waggon-Way; that the Respondents *Lord Strathmore*, *Mary Eleanor Countess of Strathmore*, and *Lord Glamis* might set forth what Interest they or any of them claimed in the Premises; that the Respondents, and all such other Persons as stood in the Place of the Lessees, named in the said Agreement of the 17th of *April*, 1727, and claimed the Benefit thereof, might be obliged specifically to perform the said Agreement, or such Part or Parts thereof as remained undetermined, and was or were capable of being performed and carried into Execution, the late Appellant submitting on his Part to perform such Part of the said Agreement as was incumbent on him to do and perform; that a Lease might be made pursuant to the said Agreement, with such Restraints, Covenants, and Proviso as the Court should think fit, necessary, and reasonable to be inserted in such Lease; that the Liberties of Way-leave and Water-course to be demised in and by such Lease might be restrained and confirmed by the said Lease to such Coal-Mines and Collieries as the Lessees named in the said Agreement had upon the said 17th Day of *April*, 1727, or at the making and executing the same, and which the Lessees to be named in such Lease then had, as standing in their Places, and to no other Coal-Mines or Collieries; that all proper Parties might join and execute such Lease; that the Respondents might make the said late Appellant a Satisfaction for all Coals which had been led by them over and along the said Waggon-Way from either of the said Collieries called *Kipbill* Colliery and *Stanley* Colliery, in Proportion to the Benefit they had received from the Use of the said Waggon-Way in leading such Coals; and that the said Respondents might, by Injunction, be restrained from making, laying, continuing, or using any Drift or Drifts, Water-Course or Water-Courses, Waggon Way or Waggon-Ways whatsoever in, upon, over, through, under, or along any of the Lands, Grounds, Wastes, or Moors of the said late Appellant at or in *Beamish* otherwise *Beamish Park*, within the Manor, Boundaries, Precincts or Territories of *Beamish*, otherwise *Beamish Park*, other than for the winning, working and getting of Coals forth and out of such Coal-Mines and Collieries as the Respondents, or those under whom they claim the Benefit of the said Articles of Agreement of the 17th of *April*, 1727, had and were possessed of at the making and Execution of the said Articles, and since had been possessed of, and then had or were possessed of, and for leading, carrying, and conveying the said Coals so won, worked, and gotten forth out of and from the said Coal-Mines and Collieries only, and for no other Purpose; and that they might be restrained by Injunction from leading or carrying any Coals wrought or gotten in either of the said Collieries called *Stanley* or *Kipbill* Colliery down or along the said Waggon-Way without the Licence of the said late Appellant, until they had made or agreed to make him an adequate Satisfaction for leading the same; and that the Respondents might also be restrained by Injunction from making, driving or using certain Drifts or Water-courses then made in the Wastes of the said Manor into the Lands, Grounds, Coal-mines and Collieries of *Stanley* aforesaid, and also from making, driving or using certain other Drifts or Water-courses also made in the Wastes belonging to the said Manor of *Beamish* through *South Moor* into or towards the Lands, Coal-Mines or Collieries in *Blackeston's Shield Raw*, for the Purposes of winning or working the same Coal-Mines or Collieries in *Stanley* and *Blackeston's Shield Raw*, or either of them; and that they might be decreed to stop up the said several Drifts or Water Courses by a Frame Dam, Frame-Dams, or in some other effectual Manner; and that they might be decreed to make the said late Appellant Satisfaction for the Benefit and Advantage they had received, and should and might receive from the Use of the said Water-Course or Water Courses, Drift or Drifts, in winning or conveying Water from the said Collieries, in Proportion to such Benefit or Advantage as they had received thereby, or otherwise that the said late Appellant might be at Liberty to stop the said several Drifts or Water-Courses, or either or any of them, within his own Lands, Grounds, and Wastes, by a Frame-Dam or Frame Dams, or in such Manner as he should think proper; and that they might be decreed to make the said late Appellant Satisfaction for the Benefit and Advantage which they had or should or might receive from the Use of the said Water-Course, in winning or conveying of Water from *Kipbill* Colliery, in Proportion to the Benefit which they had received, or should receive, from the same; and that they might be restrained in working their Collieries, to work the same in such Manner as that no Damage or Injury might be thereby done to the said late Appellant's Lands, Wastes, Coal-mines, or Collieries by the Water,
hich

which might issue and flow from the said Coal-Mines and from other adjoining Collieries through the said Collieries, and from thence into the said late Appellants said Collieries or Coal-Mines.

Answer of Lord Bute, Lord Ravensworth, and Mrs. Bowes.

To which Bill the Respondents appeared and put in their Answers, and the Respondents *John Earl of Bute, Henry Lord Ravensworth, and Mary Bowes*, by their Answers admitted that the several Persons under whom they claim the Benefit of the said Articles of Agreement of the 17th of *April, 1727*, were, at the Time of the Execution thereof, intitled to the several Coal-Mines and Collieries before-mentioned, and said they were willing and desirous specifically to perform the Agreement, or such Parts thereof as remained undetermined, and were capable of being performed and carried into Execution; and that a Lease might be made, under the Direction of the Court, pursuant to the said Heads of Agreement; and that all such Restraints, Covenants, and Provisoes, as the Court should think fit, necessary, and reasonable, might be inserted in such Lease; and also admitted, that the Lessees named in the said Agreement of the 17th of *April, 1727*, were not intitled to the said Collieries called *Stanley Kipbill* and *Blackeston's Shield Raw*, or any of them, at the Time of the Execution of the said Heads of Agreement, but that they the said Respondents had lately become possessed thereof; and also admitted, that such Coal-Mines and Collieries had been won and worked, and the Coals thereof led by them by means of the Water-course made, and Waggon-Ways laid in, over, and through the late Appellant's Estate, without the said late Appellant receiving any Satisfaction for the same, but insisted that the Liberties of Way-leave and Water-course, mentioned in the said Heads of Agreement, were meant and intended by the said *William Davison* to extend to all the Collieries which the Partners should, at any Time afterwards, be possessed of during the said Term of Ninety-eight Years, as well as those which they were then possessed of: And the Respondents *Lord Strathmore, Mary Eleanor Countess of Strathmore, and John Lord Glamis*, by their Answer said, they were Strangers to the several Matters and Things in the Bill set forth, but claimed the beneficial Estate and Interest in the Premises late of the said *George Bowes*.

Answer of Lord and Lady Strathmore and Lord Glamis.

Replications filed to the Answer. Cause heard by the Chancellor, the 7th, 8th, and 9th of December, 1773.

To which Answers Replications were filed, and the Cause being at Issue, several Witnesses were examined on both Sides. It came on to be heard before the Lord Chancellor the 7th and 8th and 9th of *December* last; when his Lordship, on the said 9th Day of *December*, upon reading the Heads of Agreement of the 17th of *April, 1727*, the three Indentures of Lease of the 1st Day of *January, 1723*, and the Depositions of certain Witnesses examined on the Part of the said late Appellant, who proved the Use, and indeed the Necessity, of Liberties of Way-Leave through and over the said late Appellant's Estate, for the Coal-Mines and Collieries the Partners in Thirds had in 1727, and the winning and working of the said Collieries called *Stanley, Kipbill, and Blackeston's Shield Raw*, by means of the said late Appellant's Water-Courses, and the leading of Coals gotten thereout along certain Waggon-Ways laid over the said late Appellant's Grounds; and, upon the Admission of the Counsel for the Respondents, that the Persons under whom they derived their Title were, on the said 17th Day of *April, 1727*, intitled only to the Coal-Mines and Collieries which are herein before stated to have at that Time belonged to them, and not to the said Collieries called *Stanley, Kipbill, and Blackeston's Shield Raw*, pronounced his Decree in the said Cause; and thereby declared that, according to the true Construction of the Heads of Agreement of the 17th Day of *April, 1727*, the Lessees Right of Way Leave and Water-Course extends to all the Collieries and Coal-Mines in their Possession at that Time, or which they should afterwards be possessed of during the Term, and did order and decree, that it should be referred to a Master to approve of a Lease, pursuant to the said Heads of Agreement, with Covenants usual in such Leases.

Appeal presented against the Decree on the 19th Day of *January, 1774*.

The said late Appellant conceiving himself to be aggrieved by so much of the said Decree as declares that, according to the true Construction of the Heads of Agreement of the 17th of *April, 1727*, the Lessees Right of Way-Leave and Water-Course extends to all the Collieries and Coal-Mines in their Possession at that Time, or which they should afterwards be possessed of during the Term, on the 19th Day of *January, 1774*, presented his Appeal therefrom to this House.

On the Day of *February* last the said *Morton Davison* died, and the said Appeal was, by Order of this House dated the 1st Day of *March, 1774*, revived in the Names of the now Appellants, who humbly hope that such Part of the said Decree as is above complained of will be reversed, for the following, among many other Reasons that will be offered at the Bar upon the Hearing; and in consequence thereof that such Order will be made as shall be necessary for their obtaining the Satisfaction prayed by the said late Appellant's Bill.

R E A S O N S.

- I. For that there are no Words in the Heads of Agreement of the 17th of *April, 1727*, which respect any other Coal-Mines and Collieries than such Coal-mines and Collieries, as the Lessees had at the Time, or which describe, in any Degree, the extraordinary and indefinite Liberties now contended for by the Respondents.
- II. If there was any Ambiguity in the Words of the Agreement, the Situation of the Property of the Parties, and the Nature and Subject-Matter of the Agreement, ought to have induced the Construction contended for by the Appellants.
- III. The Coal-mines and Collieries, which the Lessees had in 1727, were of great Extent, and, at that Time, it was well known all of them contained many different Seams of Coal, and were incapable of being worked out in a short Term of Years, and many of the Seams are still unwrought; it was impossible for the said Collieries to be won and worked to so great Profit of the Owners or Lessees, except by Means of the Way-Leaves and Water-Courses demised by the Agreement, or the one of them; and it was both reasonable and usual, that the Lessor furnishing the Easement, should participate the Profits resulting from it; for in all Grants of such Liberties as are agreed to be demised by the Heads of Agreement in 1727, the Advantages that will arise to the Grantees from the same, are always considered, and the Rent to be paid to the Grantor is in Proportion to such Advantages. In this Light the Rents reserved by the Agreement in 1727, were moderate for the Liberties granted, if

if those Liberties are confined to the Coal-Mines and Collieries the Lessees had in 1727; but no Estimate was then, or is now capable of being made of the Value of such Liberties with respect either to the Detriment to be sustained by the Lessor, or the Advantage to be gained by the Lessees, if they could have been supposed to extend to such Coal-Mines and Collieries as the Lessees might afterwards, during a long Term of Ninety-eight Years, become intitled to:

- IV. It was well known in 1727, that under every Part of Mr. *Davison's* Estate there were Coals of a very considerable Value; and besides the Coal-Mines and Collieries the said Lessees then had, there were many other Coal-Mines and Collieries of a very great Extent, belonging to different Persons, lying to the Rise thereof; some of which were incapable of being won and worked at all without the Liberties of Water-Course and Way-Leave through Mr. *Davison's* Estate, and others which could not be won and worked so conveniently and to so great Profit of the Owner, without such Liberties of Water Course and Way-Leave, or the one of them, through the same; the Water of all which Collieries, by the Extension of a Water-Course through Mr. *Davison's* Estate to them, would necessarily run and flow from those Collieries into his Estate. If the Lessees were to have a Right to enjoy the several Liberties of Water-Course and Way-Leave in and through the Estates late of the said *Morton Davison*, to the Extent they contend for, they might, and probably will, become the Purchasers of most of such Coal-Mines and Collieries, and extend, or enable the Owners of such Coal-Mines and Collieries, between whom and the Persons standing in the Place of the late Mr. *Davison*, there is no Privity of Estate or Contract to extend the Water-Courses made through, and the Waggon-Ways laid in or over the late Mr. *Davison's* Estates to them, whereby such Lessees would receive as great or greater Rents than by the Agreement are payable to the Persons standing in the Place of the late Mr. *Davison*; and such Owners would have and enjoy great and very valuable Advantage without paying to them any Consideration for the same, and which they could not otherwise have without their Aid and Consent, and by this Means other great Injuries would be done to their Property; and in particular, the Water will be brought down, and must necessarily run and flow from all such Coal-Mines and Collieries into the Coal-Mines and Collieries of the late Mr. *Davison*, (which now contain Coals won and capable of being wrought, to the Profit of the Owner of more than 100,000 *l.*) that the same will be drowned, or so overburthened with Water, as to be incapable of being worked at all, or incapable of being won and worked without the Expence of Fire-Engines: This must have been foreseen in 1727; and in a Country where Coal-Mines and Collieries are Objects of much Attention, and a general, durable and most valuable Property, it is not to be conceived, that a Gentleman living there would be so inattentive to his own Interest, as to agree to make a Grant to bind himself and his Heirs for Ninety-eight Years, which might be attended with Consequences so prejudicial.
- V. The Power given the Lessees to determine the Term at the End of any one Year after the Twentieth Year of it, is a Circumstance in Favour of the Construction contended for by the Appellants, no such Power is reserved by the Agreement to the Lessor; and it could only have been inserted by way of Caution, that if the Coal-Mines and Collieries the Lessees had in 1727, should happen to be worked out before the Expiration of the Term of Ninety-eight Years, they might not be obliged to pay a Rent longer than they enjoyed the Use of the Liberties, and the Rents made payable during the first Twenty Years were in this View moderate for the Liberties granted.

E. THURLOW.
J. DUNNING.
L. KENYON.

Sir JOHN EDEN, and others,
standing by Revivor in the
Place of MORTON DAVI-
son, Esq; deceased, - - } Appellants.

The Right Hon. JOHN EARL } Respondents.
of Bute, and others, - - }

The CASE of the APPELLANTS,
on the Appeal presented in this Cause,
the 19th Day of January, 1774.

To be heard at the Bar of the House of
Lords, on the Day of 1774.

